

FEDERAL COLLECTIVE BARGAINING LEGISLATION FOR STATE AND MUNICIPAL PUBLIC SAFETY PERSONNEL



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PROPOSED LEGISLATION

- THIS YEAR
 - HR 413 - LABOR & EDUCATION COMMITTEE
 - S 1611 - HEALTH, EDUCATION, LABOR & PENSIONS (HELP)
- POLICE
- FIREFIGHTERS
- EMS PERSONNEL

WILL THIS AFFECT YOU?

- FLSA
 - MINIMUM WAGE
 - OVERTIME
- SO THE FLSA SHOULD NOT APPLY TO YOUR STATE, RIGHT!
- SAME FOR THE FEDERAL CBA LAW

PASSED IN PAST

- JULY 17, 2007
 - 314 TO 97 IN HOUSE
- HR 413
 - JULY 2010
 - WAR SUPPLEMENTAL APPROPRIATION ACT
- MAY 2008
 - SENATE CONSIDERED
 - FILIBUSTER ENDED
 - HOSTILE AMENDMENTS - WITHDRAWN

What will the law require all states to provide?

- **RIGHT TO JOIN UNION**
 - **WAGES, HOURS, CONDITIONS OF EMPLOYMENT**
 - **IMPASSE RESOLUTION PROCEDURES**
 - **TRADITIONAL CBA CONTENTS**

MINIMUM REQUIREMENTS

- FORM & JOIN LABOR UNION
- RECOGNIZE BARGAINING REP AND PUT AGREEMENTS IN WRITING
 - MOU OR CBA
- ALLOW BARGAINING OVER WAGES, HOURS & CONDITIONS OF EMPLOYMENT
- INTEREST RESOLUTION
 - FACT-FINDING, MEDIATION OR ARBITRATION
- STATE COURT ENFORCEMENT

How many states would be affected?

- 38
 - 34 POLICE & FIRE
 - 4 JUST FIRE
- EMS??

Which states appear to satisfy minimum requirements?

- Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington, and Wisconsin.
- Police but not firefighter bargaining rights: Alabama, Georgia, Idaho, and Wyoming.



EXCEPTIONS

- NEVADA
 - POLICE & FIREFIGHTERS - LOCAL
 - NOT STATE
- Arkansas, Colorado, Louisiana, New Mexico, and West Virginia.
 - No law covering police or firefighters
 - Employers may recognize for bargaining

Unconstitutional Incursion into “states’ rights” ?

- FOSTER COOPERATION
- DETECT AND RESPOND TO
TERRORIST ATTACKS, NATURAL
DISASTERS OR OTHER MASS
CASUALTY INCIDENTS
- PROTECT LIFE AND PROPERTY,
PRESERVE NATURAL RESOURCES
AND PROTECT NATIONAL SECURITY



Here is what the FOP says

- SAFETY OF PUBLIC IS “COMPELLING INTERST” FOR FEDERAL GOVN’T
- MERELY ESTABLISHES VERY BASIC CB PRINCIPLES

FOP “SAFEGUARDS”

- PRESUME STATES IN COMPLIANCE
- NO NEW REQUIREMENTS BEYOND BILL’S PROVISIONS
- MAXIMUM WEIGHT TO CBA IN EXISTENCE WHEN LAW PASSES

Which federal law enforcement employees are exempt from bargaining?

- TSA BARGAINING RIGHTS DEBATE
- ALL PRESIDENTS SINCE JIMMY CARTER HAVE EXEMPTED PUBLIC SAFETY OFFICERS MEETING DEFINITION UNDER NEW LAW



EXEMPT FEDERAL AGENCIES

- EXEMPT UNDER CIVIL SERVICE REFORM ACT OF 1978
 - FBI
 - CIA
 - NSA
 - SECRET SERVICE

PRESIDENTIAL SUSPENSION

- PRIMARY FUNCTION
 - INTELLIGENCE
 - COUNTERINTELLIGENCE
 - INVESTIGATIVE
 - NATIONAL SECURITY WORK

FEDERAL CIVIL SERVICE REFORM ACT OF 1978

- OK TO BARGAIN OVER “CONDITIONS OF EMPLOYMENT”
 - NOT WAGES, PENSIONS OR OTHER CONDITIONS COVERED BY STATUTES
- SAME DISCRETION NOT AFFORDED STATE LEGISLATURES UNDER PROPOSED LAW

What is the Enforcement Mechanism?

- **FEDERAL LABOR RELATIONS AUTHORITY (FLRA)**
 - **CREATE AND ENFORCE CB REGULATIONS**
 - **CONSIDER WHETHER EACH STATE'S LAWS PROVIDE PUBLIC SAFETY EMPLOYEES WITH CERTAIN RIGHTS**

What about strikes and lockouts?

- PROHIBITED

What happens to existing bargaining agreements?

- NOT INVALIDATED

Will employees be required to join a union?

- NO
- RIGHT TO WORK LAWS OK
- AGENCY SERVICE FEES OFTEN EQUAL TO UNION DUES

What if a state does not provide sufficient bargaining rights?

- IF NOT “SUBSTANTIALLY PROVIDE”
- FLRA WILL MANAGE LABOR RELATIONS
 - WITHIN 1 YEAR OF ENACTMENT PROMULGATE REGULATIONS COVERING NON-COMPLYING STATES

FLRA Authority over Local Bargaining

- **BARGAINING UNIT APPROPRIATE?**
- **SUPERVISE ELECTIONS**
- **RESOLVE ISSUES RE GOOD FAITH BARGAINING**
- **CONDUCT HEARINGS AND RESOLVE UNFAIR LABOR PRACTICE COMPLAINTS**

FLRA AUTHORITY (ctd.)

- RESOLVE EXCEPTIONS TO ARBITRATION AWARDS
- PROTECT RIGHT TO JOIN UNIONS
- ORDER NON-COMPLYING STATES TO ENFORCE NEW LAW
- OTHER ACTIONS NECESSARY
 - SUBPOENAS, ADMINISTER OATHS, DEPOSITIONS, ORDER ANSWERS TO INTEROGATORIES, RECEIVING AND EXAMINING WITNESSES

What will this cost states and municipalities?

- **CONGRESSIONAL BUDGET OFFICE:**
\$44,000,000 cost to US Government
- **FOP “NOTHING”**
 - **JUST “PROCESS FOR DISCUSSIONS”**
 - **NEED NOT AGREE TO ANY COST ITEMS**
- **NO COST ESTIMATES OF ESTABLISHING STATE AGENCIES**
- **WILL ARBITRATION BE ADDED?**

How long will states have to enact complying legislation?

- **IF NOT COMPLYING** - sooner of
 - 2 years to enact from effective date of fed law
 - Or
 - End of first regular session of state legislature
- **MAY ASK FOR FUTURE DETERMINATION IF CIRCUMSTANCES CHANGE**

NO INVALIDATION

- will not invalidate a certification, recognition, collective bargaining agreement, or memorandum of understanding which has been issued, approved, or ratified by any public employee relations board or commission or by any State or political subdivision or its agents (management officials) that is in effect on the day before the date of enactment, or the results of any election held before the date of enactment.

NO PREEMPTION OF EXISTING STATE LAWS

- APPEAR ON OWN BEHALF
- EXCLUDES MILITIA OR NATIONAL GUARD
- NO BARGAINING REQUIRED RE PENSIONS AND RETIREMENT BENEFITS
- STATE LAW GRANTS RIGHTS TO ONLY SOME PUBLIC SAFETY EMPLOYEES
- REQUIRES LEGISLATIVE APPROVAL OF CBA

PROHIBITED PROVISIONS

- CAN'T PROHIBIT EMPLOYEE FROM PART-TIME EMPLOYMENT OR VOLUNTEERING DURING OFF-DUTY HOURS
- CAN'T REQUIRE STATE TO RESCIND OR PREEMPT ORDINANCE/BY-LAWS GRANTING EQUAL OR GREATER RIGHTS THAN FEDERAL LAW

Are even small municipalities included?

- STATES MAY EXEMPT
 - <5,000 POPULATION OR
 - < 25 FULL-TIME EMPLOYEES (city/town wide)

Why are so many employer organizations opposed?

- 7 NORTHEAST STATES
- 2010 FERERAL ISSUES PAPER
- OPPOSED

REASONS FOR OPPOSITION

- OUR SYSTEMS WORK WELL
- FEDS SHOULD “BUTT OUT”!
 - NOT BROKEN; DON’T FIX IT
- FEDS SHOULD ONLY STEP IN IF STATES CANNOT HANDLE THINGS LOCALLY

COSTS EVEN FOR “COMPLYING” STATES

- COSTLY JUST DEALING WITH
FEDERAL REGULATORY AGENCY
- MUST LEARN NEW SET OF LAWS,
RULES AND GUIDELINES AS
INTERACT WITH FLRA

MULTIPLE JURISDICTIONS WITH MULTIPLE DEFENSES

- TWO BITES AT THE APPLE?
- NOT CLEAR WON'T HAVE TO DEFEND COMPLAINTS BEFORE STATE AGENCY AND FLRA

BEST LEFT TO STATES

- LOCAL FOLKS KNOW BEST
- STATE LAWS AMENDED PERIODICALLY AS NEED ARISES

EVERY STATE WILL BE AFFECTED

- WILL STILL HAVE TO WATCH FED RULES
- STANDARDS MAY CHANGE OVER TIME
- MOST IMPORTANTLY
 - NO FEDERAL ISSUE HERE
 - FEDS NEED TO RESPECT BOUNDS OF STATE AUTHORITY AND JURISDICTION

Are any states adopting bargaining rights in anticipation of the new law?

- NORTH CAROLINA
- 2007 - SENATE BILL 970
- “PUBLIC SAFETY EMPLOYER-EMPLOYEE COOPERATION ACT”

RECOMMENDATIONS

- DRAFT STATE LAWS THAT WILL SATISFY FLRA
 - EVEN IF DON'T ENACT THEM YET
- MANAGEMENT RIGHTS
- MAY HAVE 2 YEARS TO DO SO
- INITIAL INSPECTION WILL BE 1 YEAR
 - LAW IN PLACE DAY BEFORE FED STATUTE TAKES EFFECT

MANAGEMENT RIGHTS

- ASSIGNMENT
- HIRING
- PROMOTIONS
- TRANSFERS
- PERFORMANCE EVALUATIONS
- SCHEDULING
- FITNESS FOR DUTY
- NON-REAPPOINTMENT

IMPASSE RESOLUTION

- NO ARBITRATION
- MEDIATION AND FACT-FINDING ONLY
- LOCAL LEGISLATIVE APPROVAL
 - NOT ONLY FINANCIAL ISSUES

RIGHT TO WORK

- NO “AGENCY FEE” REQUIREMENT

DRUG AND ALCOHOL TESTING

- NO REQUIREMENT FOR REHAB

OTHER ITEMS TO INCLUDE

- UNIFORMS, EQUIPMENT, ETC.
- POLYGRAPH TESTING
- NON-SUPERVISORY BARGAINING UNITS ONLY
 - NO CIVILIANS
 - FULL-TIME ONLY
- LIGHT DUTY AT CHIEF'S OPTION ONLY
 - ON OR OFF-DUTY AS CHIEF DECIDES

GRIEVANCE LIMITS

- EXCLUDE DISCRIMINATION OR OTHER STATUTORY VIOLATIONS
 - ONE BITE AT APPLE
- DEFINE LIMITS ON ARBITRATOR
 - CAN'T OVERRIDE STATE OR LOCAL LAWS, RULES, ETC.
- CAN'T SECOND-GUESS DISCIPLINE LEVEL
 - REVIEW FACTS ONLY

MORE RECOMMENDATIONS

- LIMIT “EVERGREEN” CLAUSES
 - ASSURE RIGHT TO TERMINATE CONTRACT
- DEFINE MID-TERM BARGAINING
 - ALLOW CHIEF TO HANDLE DISCUSSIONS
 - LIMIT DURATION TO WORTHWHILE GOOD FAITH EFFORTS TO REACH AGREEMENT
 - ALLOW IMPLEMENTATION ON IMPASSE

ANY
QUESTIONS?



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